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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Establishment of a Public Service Radio
Pool in the Private Mobile Frequencies
Below 800 MHz

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RM-9405

To: The Commission

REPLY OF CINERGY CORPORATION
TO STATEMENTS REGARDING
PETITION FOR RULEMAKING

Cinergy Corporation ("Cinergy"), through its undersigned counsel and pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("FCC"), 47 C.F.R. §1.405(b), hereby submits this Reply to Statements filed in Support of or in Opposition to the Petition for Rulemaking filed with the Commission on August 14, 1998 by UTC, the Telecommunications Association, the American Petroleum Institute ("API"), and the Association of American Railroads ("AAR").¹

Introduction

Cinergy is one of the largest diversified energy companies in the United States and is the parent company of operating companies, among which are the Cincinnati Gas & Electric

¹ This Petition appeared on a Commission Public Notice dated November 23, 1998, Report No. 2306, mimeo 90739.

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Company in Ohio and PSI Energy, Inc. in Indiana. Together, these operating companies serve 1.4 million electric and 455,000 gas customers in Ohio, Indiana and Kentucky. To facilitate its internal communications and monitoring of its power generation and distribution system, Cinergy operates extensive private land mobile and microwave communications systems. On the land mobile side, Cincinnati Gas & Electric operates facilities authorized under 12 call signs in the 450 MHz band, and 20 call signs in the 150-174 MHz band. PSI Energy operates facilities authorized under 14 call signs in the 450-470 MHz band, and six call signs in the 150-174 MHz band. These operations are in addition to facilities licensed to PSI Energy in the 800 MHz band. These mobile communications systems support Cinergy's utility operations. Cinergy is thus vitally interested in Commission action on the above-captioned petition for rulemaking, which, if implemented, would provide a dedicated spectrum home in the bands below 800 MHz for critical mobile communications operations undertaken by power utilities. The petition would further institute, for the first time, protected service contours for utility operations in the bands below 800 MHz.

Discussion

Establishment of a Public Service Radio pool by the Commission would be in the public interest and would permit the FCC to remedy deficiencies in the current coordination framework that place critical mobile communications in jeopardy of interference from the operations of other Part 90 eligibles. Cinergy's responsibilities to provide electric and gas service over a multi-state region, and its experience with employing land mobile radio systems operating in the bands below 800 MHz to coordinate these activities, make the company well-qualified to provide support to the petition, especially as it proposes to include power utilities in the Public Service Radio pool.

Cinergy notes that those parties that oppose the Petition generally take the position that all private land mobile radio operations are important, and thus no segment of the private land mobile community is entitled to a spectrum set-aside under the current land mobile regulatory framework. While all private services are important, and all private services have unique reliability and control requirements that may not be capable of being met by commercial carriers, the fact remains that mobile communications operations conducted by utilities, pipelines and railroads must be afforded a higher level of protection. Commencement of a rulemaking proceeding to establish a Public Service Radio pool would provide a level of recognition and protection that is appropriate and due these “critical infrastructure industries.”

The Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Association (ITA) filed Comments that generally oppose the establishment of a Public Service Radio pool. PCIA and ITA note the safety requirements generally faced by all eligibles in the Industrial/Business pool, and the role that mobile radio plays in permitting these Industrial/Business pool licensees to meet these needs. On this basis, they argue against creation of a separate pool for the operations of industries, such as power utilities, that support the nation’s basic infrastructure.

It is not Cinergy’s intention to challenge those who note the role that mobile radio plays in supporting licensee internal safety requirements. However, in support of creation of a Public Service Radio pool, Cinergy emphasizes that the company and other power utilities provide the core resource – electricity -- that permits modern society to function. Absent electric power, other industrial and business operations simply cannot be performed. For the population as a whole, utilities have responsibility for providing electric power to hospitals and other critical

facilities throughout their service territories, while simultaneously assuring the safety of their crews working on distribution lines, where a misstep can be instantly fatal to utility employees and deprive large areas and populations of electric power. While safety is a concern for all Part 90 eligibles, power utilities and other critical infrastructure industries such as the petroleum pipeline industry and the railroad industry have demonstrably more crucial requirements for reliable, interference-free communications in order to serve the population at large, as well as safeguard the lives of their employees.

The existing Part 90 spectrum framework does not recognize these crucial differences – power utilities and other critical infrastructure industries are members of the Industrial/Business category, which includes private carriers offering commercial mobile service in the bands below 800 MHz. The fact is that under the current rules as promulgated by the Commission's Refarming proceeding, other Industrial/Business entities have access to channels upon which crucial mobile radio operations are conducted by power utilities.

Cinergy notes with favor that ITA expressed support for mandatory protected service contours for the power, petroleum and railroad services. In the 450-512 MHz band, these contours would prohibit the 21 dBu contour of a proposed station from interfering with the 39 dBu contour of the incumbent system. As the UTC/API/AAR petition notes, adopting protected service contours would best protect existing stations in the critical infrastructure industries. As the petition also observes, however, the best level of protection for new facilities that may need to be authorized and constructed would be through the creation of a Public Service Radio pool.

Cinergy wishes to oppose the position taken by the American Mobile Telecommunications Association (AMTA) asserting the feasibility of shared access by commercial trunked systems on channels below 800 MHz employed by critical infrastructure industries. First, due to wide-area coverage requirements and reliability concerns, use of commercial trunked systems is not feasible for power utilities, particularly in the bands below 800 MHz. Second, the absence of protected service contours for critical infrastructure industries employing standard base-mobile configurations places these stations in particular danger of interference from trunked commercial systems that may be authorized on co-channel or adjacent channel frequencies. These concerns are an inevitable result of the actions taken in the Commission's refarming proceeding, which bestowed substantial discretion on frequency coordinators to recommend the assignment of frequencies from the broad Industrial/Business pool.

Cinergy notes that, inevitably, the incentive of commercial systems in the bands below 800 MHz would be to maximize the number of channel assignments for their operations. Conversely, the creation of a Public Service Radio pool in the bands below 800 MHz would tend to decrease the need of utilities for back-up channels employed to assure that alternative channels of communication are available when interference occurs in the bands below 800 MHz. This observation concerning the ultimate spectrum efficiency gains that may be gleaned from creating a Public Service Radio pool was well made by PacifiCorp in its Comments to the Petition.

Cinergy notes that the seriousness of interference concerns has been reflected by several members of the U.S. House of Representatives, who have written Chairman Kennard asking that long-term action be implemented to prevent interference to critical utility operations. Adoption of a Notice of Proposed Rule Making seeking the creation of a Public Service Radio pool would

be the quickest, most effective method for the Commission to meet this important goal. The petition itself is quite comprehensive, citing specific frequencies and offering detailed rules for the newly proposed Public Service Radio pool. The petition offers a "stand-alone" framework for rapid Commission implementation. Cinergy respectfully urges the Commission to seize the above-captioned Petition as the vehicle for addressing these national concerns.

Conclusion

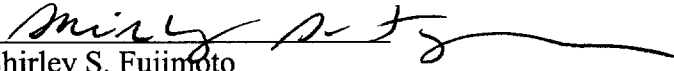
Cinergy urges the Commission to reject the arguments of those parties that seek to characterize all private land mobile operations as indistinguishable. The requirements of the critical infrastructure industries for a Public Service Radio pool are compelling. The Commission should quickly adopt a Notice of Proposed Rule Making incorporating the proposed rule provisions advanced by the above-captioned petition.

WHEREFORE, THE PREMISES CONSIDERED, Cinergy Corporation requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

CINERGY CORPORATION

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Dated: January 7, 1999

Certificate of Service

I, Constance Maisel, a secretary at the law firm McDermott, Will & Emery, do hereby certify that I have mailed copies of the foregoing Reply in regard to RM-9405 to:

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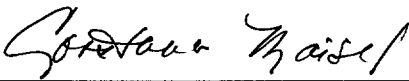
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Constance Maisel